REMARKS/ARGUMENTS

The Applicant acknowledges, with thanks, the office action dated January 15, 2008. The allowance of Claims 35-39 is noted with appreciation. This amendment is responsive to the January 15, 2008, Office Action. Claims 14, 15, and 25-27 have been canceled without prejudice or disclaimer. New claim 44 is directed to a method for performing the functionality of the apparatus recited in claim 35 and should be in condition for allowance for the same reasons as claim 35. New claims 45-48 are directly dependent from claim 44 and consequently should be in condition for allowance for the same reasons as claim 44. New claim 49 recites the apparatus of claim 35 in means plus function format and should thus be allowable for the same reasons as claim 35. New claims 50-53 are directly dependent from claim 49 and consequently should be in condition for allowance for the same reasons as claim 49. Reconsideration of this application as currently amended is now requested.

Claim Rejections

Claims 14, 15, 25, and 27 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent No. 7,143,320 to Cavin (*hereinafter,* "Cavin"). Claims 28-30, 32, and 34 stand rejected under 35 U.S.C. §102(e) as being anticipated by U.S. Patent Publication No. 2004/0085935 to Robinson et al. (*hereinafter,* "Robinson").

Claim 26 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Cavin in view of Robinson. Claim 31 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Robinson in view of Cavin. Claim 33 stands rejected under 35 U.S.C. §103(a) as being unpatentable over Robinson. Withdrawal of these rejections is requested for reasons that will now be set forth.

Claims 14, 15, and 25-27 have been canceled without prejudice or disclaimer. Independent claim 28 recites an apparatus comprising a tacking device for tracking processor performance and a control device for varying the operation of at least one access point (AP) and/or client to provide access point digital processing performance.

The Examiner cites Robinson for tracking processor performance (capacity). The performance tracked by Robinson, however, is not processor performance but "maximum useful

received power which the base station can handle whilst still maintaining a satisfactory level of interference from other transmitters." (¶ 8). A base station may have a maximum capacity P_{MAX} (¶ 9). A goal of Robinson is to enable mobile terminals to increase their power output, which would increase the total power received and cause it to approach P_{MAX} (¶ 10). Robinson does this by sending mobile terminals messages indicating available capacity, causing mobile terminals to change either data rate or power output depending on the unused capacity (¶ 13). This is not the same as processor performance. As noted in the specification of the present application, a network may suitably comprise many different access points having differing digital processing performance capabilities, such as CPU processing, memory capacity, etc. (see e.g. page 5, lines 3-8). Thus, although the channel loading on two access points may be the same, processor performance may be different depending on the CPU, memory, etc. of the access point. Thus, Robinson does not teach or suggest tracking processor performance, nor does Robinson teach or suggest a control device configured for varying the operation of an access point or client to provide balanced access point digital processing performance.

The aforementioned deficiencies in Robinson are not remedied by any teaching of Cavin. Cavin is directed to a method for increasing data throughput in a network in the presence of intermittent interference. Cavin determines whether interference is intermittent or persistent. If the interference is intermittent, Cavin does not change data rates, whereas if the interference is persistent, Cavin changes the data rate until achieving an acceptable packet error rate (PER). Thus Cavin, like Robinson, does not teach or suggest tracking processor performance, nor does Cavin teach or suggest a control device configured for varying the operation of an access point or client to provide balanced access point digital processing performance.
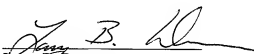
From the foregoing, neither Cavin nor Robinson, alone or in combination, teach or suggest each and every element of claim 28; therefore, claim 28 is not obvious in view of Cavin and/or Robinson. Claims 29-34 directly depend from claim 28 and thus contain each and every element of claim 28 and consequently are not obvious in view of Robinson and/or Cavin for the same reasons as claim 28.

Conclusion

Withdrawal of the rejections to this application is requested for the reasons just set forth, and a Notice of Allowance is earnestly solicited. If there are any fees necessitated by the foregoing communication, the Commissioner is hereby authorized to charge such fees to our Deposit Account No. 50-0902, referencing our Docket No. 72255/32775.

Respectfully submitted,

Date: _3-28-08_

Larry B. Donovan
Registration No. 47,230
TUCKER ELLIS & WEST LLP
1150 Huntington Bldg.
925 Euclid Ave.
Cleveland, Ohio 44115-1414
Customer No.: 23380
Tel.: (216) 696-3864
Fax: (216) 592-5009